HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.7346 of 2007

Between:

The Deputy Secretary to Government,
Home Department and Chairman,
Sainik Welfare Committee, M.J. Road,
Nampally, Hyderabad and two others.

… Petitioners

And

Sri J. Bhaskara Raju

… Respondent

:: ORDER::

Counsel for the Petitioners: Government Pleader for Services – I.

April 24, 2007

Per G.S. Singhvi, CJ

Feeling aggrieved by the direction given by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') in O.A.No.328 of 2005 not to recover the excess amount paid to the applicant (the respondent herein), the Deputy Secretary to Government, Home Department and Chairman, Sainik Welfare Committee and two others have filed this petition under Article 226 of the Constitution.

A perusal of the record shows that after his retirement from the Army, the respondent was appointed as Junior Assistant in the services of the Government of Andhra Pradesh in 1984. His pay was fixed in accordance with the policy contained in G.O.Ms.No.375, dated 19-10-1990. Subsequently, the State Government issued G.O.Ms.No.2574, dated 29-9-1994 and directed that the pay of the ex-Army personnel be re-fixed keeping in view the policy contained in G.O.Ms.No.257, dated 2-9-1983 and the excess amount paid to them be recovered. Accordingly, the competent authority issued show cause notices to the respondent and others and re-fixed their pay with a direction to recover the excess amount already paid.

The respondent challenged the re-fixation of his pay and the proposed recovery by filing an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act'), which was registered as O.A.No.328 of 2005. He pleaded that his pay had been fixed by the competent authority without any misrepresentation or fraud and, therefore, the government was not entitled to re-fix his pay and, in any case, there was no justification to recover the alleged excess amount paid to him.

In the counter filed on behalf of the non-applicants (the petitioners herein), it was averred that the pay of the applicant (the respondent herein) was fixed ignoring the policy contained in G.O.Ms.No.257, dated 2-9-1983 and, therefore, it became necessary to re-fix his pay and recover the excess amount.

The Tribunal upheld re-fixation of the respondent's pay, but directed the petitioners not to recover the excess amount paid to him by observing that he is not to be blamed for mistaken fixation of pay in accordance with G.O.Ms.No.375, dated 19-10-1990.

Learned Government Pleader argued that the direction given by the Tribunal not to recover the excess amount paid to the respondent is liable to be quashed because there is no legal basis for preventing the petitioners from effecting recovery of the excess amount paid to the respondent. He submitted that the respondent's pay was required to be fixed in accordance with G.O.Ms.No.257, dated 2-9-1983, but, by mistake, the concerned authority fixed his pay in accordance with G.O.Ms.No.375, dated 19-10-1990 and, therefore, the State Government had to order re-fixation of the pay of the respondent and similarly situated persons.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed. In our opinion, the Tribunal did not commit any error by directing that the excess amount be not recovered from the respondent because he is not responsible for erroneous fixation of pay.

In **P.H. Reddy & ors. v. N.T.R.D. & ors.**[1] and **A.S. Kutti Nair v. Secretary to Govt.,**[2], the Supreme Court held that in the absence of any fraud or misrepresentation on the part of the employees, the employer should not recover the excess amount paid

to him as a result of erroneous fixation of pay. Therefore, we do not find any justification to upset the direction given by the Tribunal and allow the petitioners to recover the alleged excess amount paid to the respondent, who has already retired from service.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.9387 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, CJ

April 24, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] JT 2002 (2) SCC 483

[2] 2006 (2) SLR 375